IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9623 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

ARVINDBHAI RAGHUBHAI PIPLAWALA

Appearance:

1. Special Civil Application No. 9623 of 2002

MS ROOPAL R PATEL for Petitioner No. 1

MR KIRIT R PATEL for Respondent No. 1

MR DIPAK R DAVE for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 23/01/2003

ORAL JUDGEMENT

Heard the learned advocates. The present petition is filed challenging the judgement and award dated 26.12.2001 in Reference (LCS) No.344 of 1996 passed by the Labour Court, Surat. The learned Judge of the Labour Court was pleased to partly allow the reference and order reinstatement of the respondent workman on the original post with continuity of service and with consequential benefits arising from the continuity of service, but without back wages.

2. The case of the petitioner corporation is that the respondent workman who was to be on duty on 23.2.1995, without taking prior permission from the higher officer, had remained unauthorisedly absent. Therefore, a trip of an ST Bus was required to be cancelled, which resulted into loss of income of Rs.600/-, to the petitioner corporation. The respondent workman continued to remain unauthorisedly absent upto 10.4.1995. A charge sheet was issued on 11.4.1995 which was sent to his residential address by Registered Post A.D. and also under U.P.C. which was received by the respondent workman. Still he did not file any reply to the same. The hearing was fixed on 6.5.1995, but despite intimation of the same, he did not remain present. The departmental inquiry was proceeded and having found the charge proved, a show cause notice dated 16.5.1995 was issued. The said show cause notice was replied by letter dated 18.5.1995, which was taken into consideration and an order of dismissal dated 14.6.1995 was passed.

3. The learned Judge has discussed the defence of the respondent workman in para 6. By exercising discretion under section 11A of the Industrial Disputes Act, 1947 interfered with the order of punishment. The learned advocate Ms.Roopal R. Patel appearing for the petitioner corporation submitted that the resultant effect of the judgement and award under challenge is that the respondent workman is punished only with non grant of back wages, which in fact is no penalty. She submitted that in the past also there were four such incidents of unauthorised absence, though total default including default of other nature are as many as 73. Taking into consideration the fact that in the past there were only four incidents of such nature and the corporation itself has not taken a serious view, the dismissal will be too harsh a penalty, which amounts to economic death of the employee, which would work even more harsh on the family members, the judgement and award calls for a suitable modification.

4. In light of the aforesaid discussion, the judgement and award of the Labour Court is upheld to the extent it grants reinstatement without back wages, with continuity of service and consequential benefits arising from continuity of service. However, the respondent workman shall visit with a penalty of stoppage of two increments with future effect.

5. Mr.Deepak R. Dave, the learned advocate appearing for the respondent workman submitted that now that the petition is finally disposed of, the petitioner

corporation may implement the award of reinstatement. The petitioner corporation shall reinstate the respondent workman within four weeks from the date of receipt of this order.

6. Rule is made absolute in the aforesaid terms. No order as to costs.

(Ravi R. Tripathi, J.)
karim